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In the Supreme Court of the United States

OCTOBER TERM, 1983

BRISTOL CORPORATION, D/B/A FEY MANUFACTURING CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner challenges the determination that light-duty pick-up trucks do not qualify as "passenger automobiles" for purposes of the exemption from federal excise tax set forth in Section 4061(b)(2) of the Internal Revenue Code. The decision below is correct. Petitioner does not allege (nor is there) a conflict among the circuits on the question presented. There is no basis for review by this Court.

1. Petitioner manufactures steel towing bumpers designed primarily for use on the rear of light-duty pick-up trucks (Pet. App. 1). Petitioner sells most of its bumpers to retail truck dealers, who install the bumpers after the trucks arrive from the factory (*ibid.*). During 1972-1973, more than 90% of petitioner's bumpers were ultimately installed on light-duty pick-up trucks (*id.* at 2).

Section 4061(a) and (b)(1) of the Code,[1] read together, impose an excise tax on "parts or accessories" sold for use on trucks, unless those parts or accessories are sold "on or in connection" with the sale of the truck itself. Section 4061(b)(2) exempts from tax "any part or accessory which is suitable for use (and ordinarily is used) on or in connection with * * * a passenger automobile." The Commissioner determined that petitioner's bumpers, being "parts or accessories" that are sold to dealers separately from the pick-up trucks themselves, were subject to tax under Section 4061(b)(1).

Petitioner paid the tax for 1972-1973 and sued for a refund, contending that its bumpers were tax-exempt because the pick-up trucks on which they were ultimately installed were "passenger automobiles" within the meaning of Section 4061(b)(2). The district court agreed with petitioner (Pet. App. 4-6). The court of appeals (Pet. App. 9) reversed, citing its decision in *Luben Industries, Inc.* v. *United States*, 707 F.2d 1037 (9th Cir. 1983). The court held in *Luben Industries* that the evolution of the statute's language, as well as its legislative history, clearly establish that light-duty pick-up trucks are not "passenger automobiles" for purposes of Section 4061(b)(2) (Pet. App. 14-16).

2. The court of appeals correctly analyzed the statute. Until 1965, the Code imposed an excise tax on automobiles and trucks, as well as on "parts or accessories" sold separately for use on automobiles and trucks. See H.R. Rep. 433, 89th Cong., 1st Sess. 18-21 (1965). In 1965, Congress acted to eliminate the excise tax on automobiles and on their separately-sold parts. Excise Tax Reduction Act of 1965, Pub. L. No. 89-44, § 201(a), 79 Stat. 136. This was

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[1]Unless otherwise noted, all statutory references are to the Internal Revenue Code of 1954 (26 U.S.C.), as amended ("the Code" or "I.R.C.").

accomplished by providing in Section 4061(a)(2) for a phase-out of the tax on "passenger automobiles," and by enacting Section 4061(b)(2) to provide an exemption for parts and accessories sold separately for use in connection with "any article enumerated in subsection (a)(2)." 79 Stat. 137. The purpose of the 1965 amendment was to provide relief from the regressive effect of a tax on passenger automobiles, and the Committee reports consistently refer to it as a "passenger car" amendment. See generally S. Rep. 324, 89th Cong., 1st Sess. (1965); H.R. Rep. 433, *supra*. The reports make it clear that Congress, in providing the new exemptions, distinguished "passenger automobiles" from light-duty trucks. See, *e.g.*, S. Rep. 324, *supra*, at 24-25.

In 1971, Congress added light-duty trucks to the vehicles that were exempt from tax under Section 4061(a)(2). Revenue Act of 1971, Pub. L. No. 92-178, § 401(a), 85 Stat. 530. If Congress had intended also to exempt from tax "parts or accessories" sold separately for use on light-duty trucks, it would simply have left Section 4061(b)(2) unchanged, since, as noted above, the tax exemption made available by that Section was already accomplished by a cross-reference to vehicles "enumerated in subsection (a)(2)." Congress, however, did not do so. Rather, it amended Section 4061(b)(2) to read as it now does, deleting the phrase "any article enumerated in subsection (a)(2)" and replacing it with "passenger automobile." 85 Stat. 533. In thus revising the statute, Congress plainly indicated its understanding that "light-duty trucks" are not "passenger automobiles." Indeed, the Committee reports expressly state that, although the tax on light-duty trucks themselves was being repealed, the tax on "parts or accessories" sold separately for use on light-duty trucks was to continue in existence. S. Rep. 92-437, 92d Cong., 1st Sess. 81 (1971); H.R. Rep. 92-533, 92d Cong., 1st Sess. 52 (1971).

3. Contrary to petitioner's contention (Pet. 4-5), the decision below does not result in impermissible discrimination between "the giant * * * manufacturers" of automobile parts and "independent manufacturers" like petitioner. Rather, the law distinguishes between parts that are sold "on or in connection with" the sale of a vehicle, and parts that are sold separately from it. It may be that this distinction caused the excise tax, during the years in question, to fall with greater frequency on parts manufactured by "independents," since they, unlike the major automakers, generally sold their parts separately. Yet any such differential economic impact was the necessary consequence of the statute Congress chose to enact, and petitioner does not (and could not) contend that this differential impact renders the tax invalid. *Williamson* v. *Lee Optical Co.*, 348 U.S. 483 (1955). In any event, Congress in 1978 eliminated the distinction of which petitioner complains, providing that "[t]he tax imposed by Section 4061(b) shall not apply to the sale by the manufacturer * * * of any article which is to be resold by the purchaser on or in connection with the first retail sale of a light-duty truck." Revenue Act of 1978, Pub. L. No. 95-600, § 701(ff)(1), 92 Stat. 2924 (presently codified at 26 U.S.C. 4063(e)).

4. The court below properly rejected petitioner's argument (Pet. 5-6) that the question whether light-duty trucks are "passenger automobiles" within the meaning of Section 4061(b)(2) is a question of fact subject to the "clearly erroneous" standard of review. The interpretation of a statute is a question of law.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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